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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

ANDY G. ST. CLAIR,

Defendant and Appellant.

F071499

(Super. Ct. No. BF150907A)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Kern County. Colette M. Humphrey and John S. Somers, Judges‡.

Stephanie L. Gunther, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the State Attorney General, Sacramento, California, for Plaintiff and Respondent.

* Before Levy, Acting P.J., Kane, J. and McCabe, J.†

† Judge of the Merced Superior Court assigned by the Chief Justice pursuant to article IV, section 6 of the California Constitution.

‡ Judge Humphrey heard and ruled on the motion to suppress; Judge Somers sentenced appellant.

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Andy G. St. Clair pled guilty to two misdemeanor counts, one for possession of concentrated cannabis, and the other for possessing an assault weapon. He was placed on probation for three years. We affirm the judgment.

FACTUAL AND PROCEDURAL SUMMARY

The information charged St. Clair and his wife, Savanah Marie St. Clair, with felony possession of marijuana for the purposes of sale (Health & Saf. Code, § 11359), felony cultivation of marijuana (Health & Saf. Code, § 11358), and misdemeanor child endangerment (Pen. Code, § 273a, subd. (b)). St. Clair was also charged with misdemeanor possession of an assault weapon (Pen. Code, § 30605).

The testimony at the preliminary hearing indicated that on the date in question Kern County Deputy Sheriff Donald Charles Marvin responded to the St. Clair residence to accompany a social worker from Kern County Department of Human Services to investigate a report of child neglect. The two knocked on the door of the residence. St. Clair walked from behind the house and met the two at the door. Marvin explained the two were at the residence to perform a child welfare check. St. Clair opened the door, which Marvin took to be an invitation to enter. When he did so there was a significant amount of marijuana in plain sight. St. Clair also allowed Marvin to look into the garage where there appeared to be a marijuana cultivation operation. The St. Clair's two young children were found in a bedroom in which one of the children apparently recently defecated. About 10 pounds of drying marijuana was confiscated.

Additional law enforcement officers were called to the residence. When St. Clair was asked if he had any weapons, St. Clair opened a gun safe for another detective in which a weapon was found that appeared to be an illegal assault weapon.

St. Clair filed a motion to suppress all of the evidence discovered at his house arguing his consent to the search of his residence was the result of illegal law enforcement coercion. The motion was denied.

After the motion to suppress was denied, St. Clair pled to misdemeanor possession of an assault rifle, and the added count of misdemeanor possession of concentrated cannabis in violation of Health and Safety Code section 11357, subdivision (c). He was placed on probation for three years, including 240 hours of community service.

St. Clair filed a notice of appeal challenging the denial of his motion to suppress.

DISCUSSION

Appellate counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436, asserting that after reviewing the file she could not identify any arguable issues. By letter dated October 23, 2015, we invited St. Clair to inform this court of any issues he wished addressed. St. Clair did not respond directly to our request. After our independent review of the file, we agree with appellate counsel that there are no arguable issues in this case.

St. Clair entered into a plea agreement, and then filed a notice of appeal without seeking a certificate of probable cause. As a result, the challenges in this appeal are limited. Generally, Penal Code section 1237.5 precludes an appeal from the judgment entered after a guilty plea unless the defendant applies for, and the trial court grants the defendant, a certificate of probable cause. Without a certificate of probable cause the issues raised by the defendant are not reviewable. (*People v. Sem* (2014) 229 Cal.App.4th 1176, 1187.)

There are two exceptions to this general rule. A defendant does not need a certificate of probable cause to appeal when the appeal addresses postplea matters not challenging the plea's validity, or when the issue is the lawfulness of a search or seizure which was first contested in the trial court before the defendant entered a plea. (*People v. Mendez* (1999) 19 Cal.4th 1084, 1096; Cal. Rules of Court, rule 8.304(b)(4).)

St. Clair's notice of appeal identified the denial of his motion to suppress as the basis of the appeal. Marvin testified at the motion in a manner essentially consistent with his preliminary hearing testimony summarized above. He reiterated that when he

informed St. Clair he and the social worker were at the house to perform a child welfare check. St. Clair opened the door and allowed the two men to enter the residence. When Marvin entered the house he first noticed a very strong odor of marijuana, and then observed a large quantity of marijuana in plain sight. When Marvin asked if there were children in the home, St. Clair opened the door to the bedroom where St. Clair observed the children and a strong odor of feces. Marvin asked to see the kitchen and was taken upstairs. The kitchen was unkempt, but there was adequate food for the family. Marvin asked to see the bathroom, and was taken to the master bathroom. Marvin observed more marijuana in plain sight. Marvin also heard the sound of a fan or motor emanating from the garage. He asked St. Clair what was in the garage. St. Clair led Marvin to the garage and opened the door for him. Marvin observed many more marijuana plants being cultivated. Marvin considered the entire matter to this point in time an examination with consent, apparently related to the welfare of the children.

About an hour after arriving at the scene, Marvin called his sergeant and reported what he had observed. Later, a code enforcement officer and two officers who conducted a drug investigation were also called to the residence.

Kern County Deputy Sheriff Joshua Nicholson testified that he responded to the St. Clair residence that day. At one point, he asked St. Clair if he had any firearms in the residence. St. Clair said he did. St. Clair described the weapons as a shotgun and two rifles. One of the rifles St. Clair described as “almost like an AR-15.” Nicholson asked additional questions about the rifle, and eventually asked if he could see it. St. Clair said he could, and took Nicholson to the living room area and opened a gun safe. Nicholson then examined the rifle.

Defense counsel argued that when Marvin arrived at the house he essentially demanded entrance, which rendered the consent provided by St. Clair was merely a submission to Marvin’s authority. The trial court stated it found Marvin to be “extremely

credible,” and denied the motion concluding the event was “the very definition of consensual contact and consensual search.”

“Where, as here, the prosecution relies on consent to justify a warrantless search or seizure, it bears the ‘burden of proving that the defendant’s manifestation of consent was the product of his free will and not a mere submission to an express or implied assertion of authority. [Citation.]’ [Citation.] Consent that is the product of an illegal detention is not voluntary and is ineffective to justify a search or seizure. [Citations.] Where an illegal detention occurs, unless ‘subsequent events adequately dispel the coercive taint of the initial illegality, i.e., where there is no longer causality, the subsequent consent is’ ineffective. [Citations.]

“Under these principles, the threshold issue here is whether defendant was detained when he gave consent. As the United States Supreme Court has explained: “[N]ot all personal intercourse between policemen and citizens involves ‘seizures’ of persons.” [Citation.] In this context, a seizure occurs only ‘when the officer, “by means of physical force or show of authority,” terminates or restrains [a person’s] freedom of movement [citation] “*through means intentionally applied ...*” [citation].’ [Citation.] The dispositive question is whether, “in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he [or she] was not free to leave ...” [citation].’ [Citation.] ‘[W]hen a person “has no desire to leave” for reasons unrelated to the police presence, the “coercive effect of the encounter” can be measured better by asking whether “a reasonable person would feel free to decline the officers’ requests or otherwise terminate the encounter ...” [citations].’ [Citation.] The test is ‘objective,’ not subjective; it looks to ‘the intent of the police as objectively manifested’ to the person confronted. [Citation.] Accordingly, an ‘officer’s uncommunicated state of mind and the individual citizen’s subjective belief are irrelevant’ [Citation.]

“Whether a seizure occurred within the meaning of the Fourth Amendment is a mixed question of law and fact qualifying for independent review. [Citations.] Accordingly, ‘we review the trial court’s findings of historical fact under the deferential substantial evidence standard, but decide the ultimate constitutional question independently. [Citations.]’ [Citation.] We must accept factual inferences in favor of the trial court’s ruling. [Citation.] If there is conflicting testimony, we must accept the trial court’s resolution of disputed facts and inferences, its evaluations of credibility, and the version of events most favorable to the People, to the extent the

record supports them. [Citations.]” (*People v. Zamudio* (2008) 43 Cal.4th 327, 341-342.)

The trial court concluded this was a consensual encounter between St. Clair and Marvin. St. Clair did not argue he was illegally detained, but merely that his consent was coerced because of the law enforcement presence.

The testimony at the hearing supports the trial court’s conclusion. Marvin’s testimony, which the trial court found credible, established that St. Clair voluntarily cooperated when Marvin and the social worker arrived at the residence to conduct a child welfare check. In fact, there is nothing in Marvin’s testimony that suggests his observations were the result of anything other than St. Clair’s voluntary cooperation. Accordingly, the trial court did not err when it denied St. Clair’s motion to suppress.

We noted above that St. Clair did not respond directly to our invitation to identify any issues he wished us to review. He did however, present to this court a document entitled “APPELLANT’S SUPPLEMENTAL BRIEF IN PROPRIA PERSONA.” (Boldface omitted.) This document in large part sought different appellate counsel. We denied this request. In the document, however, St. Clair asserted the prosecution withheld police communication logs for the incident from the defense. However, the record from the preliminary hearing suggests defense counsel had such logs. If St. Clair is referring to some other document, the request is so vague that we are unable to respond to it.

St. Clair also argued he was denied police personnel information by the prosecution. The record does not contain a motion filed pursuant to *Pitchess v. Superior Court* (1974) 11 Cal.3d 531, therefore he was not entitled to the confidential information contained in any officer’s personnel file. (Pen. Code, §§ 832.5 - 832.8; Evid. Code, §§ 1043 - 1047.)

DISPOSITION

The judgment is affirmed.